

§ 27.17

40 CFR Ch. I (7–1–06 Edition)

(2) If the presiding officer disqualifies himself or herself, the case shall be reassigned promptly to another presiding officer.

(3) If the presiding officer denies a motion to disqualify, the Environmental Appeals Board may determine the matter only as part of its review of the initial decision upon appeal, if any.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5326, Feb. 13, 1992]

§ 27.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the presiding officer;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the presiding officer; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 27.18 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

§ 27.19 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;